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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

RIGOBERTO TECALIZ, individually and on behalf of others similarly situated and on behalf of other aggrieved employees,

Plaintiff,

vs.

NATIONAL RESTAURANT INC. DBA BLACK BEAR DINER, a California corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. 37-2023-00046906-CU-OE-CTL

Honorable Matthew C. Braner
Department C-60

NOTICE OF MOTION AND MOTION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS, ENHANCEMENT PAYMENT, AND SETTLEMENT ADMINISTRATION COSTS

Date:	August 15, 2025
Time:	9:00 a.m.
Dept.:	C-60

Complaint Filed:	October 27, 2023
FAC Filed:	November 27, 2023
Trial Date:	Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **August 15, 2025 at 9:00 a.m.** in Department C-60 of the above-captioned Court located at 330 West Broadway, San Diego, California 92101, Plaintiff Rigoberto Tecaliz ("Plaintiff") will and hereby does move the Court for an Order (1) awarding Class Counsel's attorneys' fees in the amount of Two Hundred Thirteen Thousand Dollars and Zero Cents ($213,000.00); (2) awarding Class Counsel's actual litigation costs and expenses in the amount of Fifteen Thousand Four Hundred Ninety-Four Dollars and Six Cents ($15,494,06); (3) approving the Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents ($10,000.00) to Plaintiff in recognition of his services to the Class; (4) approving the Settlement Administration Costs in the amount of Seven Thousand Four Hundred Fifty Dollars and Zero Cents ($7,450.00); and (5) approving the PAGA Amount in the amount of Twenty-Two Thousand and Five Hundred Dollars ($22,500.00) to be paid to the LWDA as seventy-five percent (75%) of the Thirty Thousand Dollars and Zero Cents ($30,000.00) allocated to civil penalties under PAGA.

This Motion is made pursuant to California Rules of Court, Rule 3.769, which requires court approval by the Court of a class action settlement. This Motion is based on the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Class Counsel (Miriam L. Schimmel and Alexandra Rose), Class Representative (Rigoberto Tecaliz), and the Settlement Administrator (Nathalie Hernandez of ILYM Group, Inc.), the pleadings and other records on file with the Court in this matter, and such evidence or oral argument as may be presented at the hearing on this Motion.

Respectfully submitted,

Dated: July 24, 2025

BLACKSTONE LAW, APC

By: *Miriam L. Schimmel*
Miriam L. Schimmel
Attorneys for Plaintiff Rigoberto Tecaliz
and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Rigoberto Tecaliz ("Plaintiff" or "Class Representative") moves for an award of the Attorneys' Fees and Costs to Class Counsel, approval of the Enhancement Payment to Plaintiff as the Class Representative, and approval of the Settlement Administration Costs to ILYM Group, Inc. ("ILYM" or "Settlement Administrator"). As discussed in the Motion for Final Approval of Class Action and PAGA Settlement submitted concurrently herewith, Plaintiff and Defendant National Restaurant Inc. dba Black Bear Diner ("Defendant") (together with Plaintiff, the "Parties") have entered into the Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement" or "Settlement") for a total amount of Six Hundred Thirty-Nine Thousand Dollars and Zero Cents ($639,000.00) ("Gross Settlement Amount"). (*See* Declaration of Alexandra Rose in Support of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement ["Rose Decl."], ¶ 10).

The Court conditionally certified, for settlement purposes only, the Class defined as: "All current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification)" ("Class" or "Class Member(s)"). (Settlement Agreement, ¶ 6.b; Rose Decl., ¶ 8). The "Class Period" is defined as the period from October 27, 2019 through November 25, 2024. (Settlement Agreement, ¶ 6.f; Rose Decl., ¶ 8). The "Settlement Class Members" consist of all Class Members who did not submit a timely and valid Request for Exclusion. (Settlement Agreement, ¶ 6.mm; Rose Decl., ¶ 8). The "PAGA Employees" consist of "all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification)." (Settlement Agreement, ¶ 6.y; Rose Decl., ¶ 8). The "PAGA Period" is defined as the period from September 18, 2022 through November 25, 2024. (Settlement Agreement, ¶ 6.aa; Rose Decl., ¶ 8).

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There have been no objections to or requests to opt-out from the Class Settlement. (Declaration of Nathalie Hernandez of ILYM Group, Inc. Regarding Notice and Settlement Administration ["Hernandez Decl."], ¶¶ 11 and 12).

Because the Settlement achieves outstanding results for the Settlement Class Members, the PAGA Employees, and the State of California, Plaintiff respectfully requests, on behalf of the Class and without opposition from Defendant, that the Court approve the Settlement as fair, adequate, and reasonable, and enter judgment in accordance with the Settlement's terms.

Plaintiff seeks the Court's approval of an attorneys' fee award of Two Hundred Thirteen Thousand Dollars and Zero Cents ($213,000.00), plus reimbursement of Fifteen Thousand Four Hundred Ninety-Four Dollars and Six Cents ($15,494,06) in actual litigation costs and expenses. Class Counsel's request for an award of attorneys' fees and costs is reasonable and appropriate in light of the outstanding work performed by Class Counsel in the matter, the contingent nature of this action, and the results achieved under the Settlement. *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19.

Plaintiff also requests the Court's approval of the Enhancement Payment to be paid to Plaintiff in the amount of Ten Thousand Dollars and Zero Cents ($10,000.00). This amount proposed to be awarded to Plaintiff is fair and reasonable for the reasons Plaintiff provided in his declaration. (*See* Declaration of Plaintiff Rigoberto Tecaliz in Support of Motion for Final Approval of Class Action and PAGA Settlement ["Tecaliz Decl."] filed concurrently herewith). Courts approve incentive awards to plaintiffs when justified and appropriate to compensate plaintiffs for their time, effort, and inconvenience. (*See e.g., Van Vranken v. Atlantic Riclifield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299).

Finally, Plaintiff requests that the Court approve the payment of Seven Thousand Four Hundred Fifty Dollars and Zero Cents ($7,450.00) to the Settlement Administrator as compensation for its administration services it has and will provide in connection with the Settlement. (*See, generally,* Bench Decl.).

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II. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED

Class Counsel seeks one-third (1/3) of the Gross Settlement Amount (i.e., $213,000.00) for fees for the time spent litigating this matter and reimbursement of actual costs and expenses totaling Fifteen Thousand Four Hundred Ninety-Four Dollars and Six Cents ($15,494,06) incurred in the prosecution of this case. (Declaration of Miriam L. Schimmel in Support of Motion for Attorneys' Fees and Costs, Enhancement Payment, and Settlement Administration Costs ["Schimmel Decl."], ¶ 3). The requested fees and costs are fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Class Counsel for the Class Members. (Ibid).

A. Plaintiff's Fee Request of One-Third (1/3) of the Gross Settlement Amount is Proper Under the Common Fund Doctrine

Courts have long recognized the "common fund" or "common benefit" doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund. (*See Serrano v. Priest ("Serrano III")* (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 16 7; *see also Boeing Co. v. Van Gernert* (1980) 444 U.S. 472,478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392).

The California Supreme Court has held that, "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano III, supra,* 20 Cal.3d at 34, quoting *D'Amico,* 11 Cal.3d 1; *see also Boeing, supra,* 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Mills, supra,* 396 U.S. at 391-392 (United States Supreme Court endorsing the common fund approach in class actions)). California Practice Guide: Civil Trials and Evidence (The Rutter Group) at § 17:172.3 explains the common fund doctrine as follows:

> Where the lawsuit results in the recovery of a fund or property benefiting others as well as plaintiff (e.g., a class action), the court has inherent equitable power to order plaintiffs attorney fees paid out of the common fund or property [citations]. Such fee spreading assures that all of those benefited by the litigation pay their fair share of obtaining the recovery.

The percentage-of-the-fund approach appears to be the preferred method of awarding fees in traditional common fund cases, such as this case. Where the settlement amount is a "certain or easily calculable sum of money," use of the percentage-of-the-fund method is appropriate. (*Serrano III,* 20 Cal. 3d at 35).

In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, a wage and hour class action wherein class counsel obtained a $19 million non-reversionary settlement on behalf of the class, the California Supreme Court approved the use of the percentage of fund or common fund method to award one-third of the settlement amount or $6,333,333.33 to class counsel for attorneys' fees. The Court stated:

> Whatever doubts may have been created by Serrano III, supra, 20 Cal.3d 25, [], or the Court of Appeal cases that followed, we clarify today that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation established a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method - including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [] convince us the percentage method is a valuable tool that should not be denied our trial courts.

(*Laffitte*, 1 Cal.5th at 503).

In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the California Supreme Court recognized that the common benefit doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share."

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Numerous appellate courts have similarly found. (*See e.g., Knoff v. City and County of San Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a "contingent percentage" award of attorneys' fees in a representative action as the proper exercise of the court's broad equitable powers); *Rider v. County of San Diego* (1992) 1 I Cal.App.4th 1410, 1423 (attorneys' fees and expenses properly awarded from common benefit composed of illegally imposed sales and use tax); *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners of residential property in an inverse condemnation action)).

The Supreme Court noted that several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. (*Laffitte*, 1 Cal.5th at 503; *see Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373, 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79). The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*Lealao*, 82 Cal.App.4th at 30-31; *see e.g., In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 (approving attorney's fee of 33%)).

A fee of one-third (1/3) of the Gross Settlement Amount (i.e., $213,000.00) is easily within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, 723 F. Supp. at 1378). According to Professor Newberg: "No general rule can be articulated on what is a reasonable percentage of a common fund…Usually 50 per cent of the fund is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented." (Newberg on Class Actions (4th Ed.), § 14.6). Class Counsel's requested fee is reasonable and falls well within the historical range of attorney's fee awards under the common fund theory. Based on Class Counsel's showing of reasonableness, the Court should approve the requested fees pursuant to the common fund approach.

B. The Circumstances of this Case Support a One-Third (1/3) Fee Award

Given the significant results achieved under the circumstances of this litigation, the requested fee award is reasonable. As discussed in *Sumitomo Copper Litigation, supra,* 74 F. Supp. 2d at 396:

> No one expects a lawyer whose compensation is contingent on the success of his services to charge, when successful, as little as he would charge a client who in advance of the litigation has agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

In that vein, this Court should consider the contingent nature of this case, the uncertainty of the outcome, the quality of the counsel, and the preclusion from other employment.

C. The Contingent Nature of This Matter

From the outset of this case to the present, prosecution of this matter has involved significant financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. Class Counsel has placed its own resources at risk to prosecute this matter with no guarantee of success. The risks of this matter are apparent in that class certification would likely have been a hard-fought issue, especially given the uncertainty regarding certification of cases such as this. Moreover, even if class certification were granted over Defendant's opposition, there was no assurance that Plaintiff would succeed at trial. (Rose Decl., ¶¶ 20-22). Despite such challenges, Class Counsel was able to persuade Defendant that it faced significant liability exposure such that it was willing to pay $639,000.00 to settle the Class Members' claims.

D. The Experience, Reputation, Ability of Counsel, and Skill in Litigation

Class Counsel has substantial experience in wage-and-hour and other class action litigation, including litigation involving the legal issues in this matter. (Schimmel Decl., ¶ 6). Class Counsel's skill in developing a factual record and convincing Defendant of its litigation exposure under California law was essential to achieving the Settlement. Through its skill and reputation, Class Counsel was able to obtain a settlement that provides an outstanding result for Class Members. (*See generally* Schimmel Decl.).

E. The Results Achieved

The excellent results achieved by the Settlement support Class Counsel's request for attorneys' fees. Class Members' support for the results achieved by Class Counsel is demonstrated by the absence of any objections to either the Class Settlement or to Class Counsel's request for fees, both of which were described clearly in the Class Notice. As of the date of this Motion, Settlement Class Members will be paid, on average, approximately $982.33 each, which is intended to compensate them for the alleged wage and hour violations they suffered during their employment. (Rose Decl., ¶ 12). This is a significant benefit for the Settlement Class Members here as it represents a recovery for highly disputed claims. Equally important is the fact that the State of California will receive $22,500.00 for enforcement of labor laws and education of employers. (Schimmel Decl., ¶ 13).

Furthermore, the efficiency with which this litigation was conducted and resolved should be rewarded. After preparing and investigating the case prior to filing the case, Class Counsel strongly litigated and then resolved the case in an efficient manner. The Class Members will directly benefit from the prompt and fair resolution of their claims. They will be receiving a significant award in a relatively short period of time, as opposed to waiting years to recover some undetermined amount if they succeeded at trial, which is an uncertainty in itself.

F. Preclusion of Other Employment

As California law recognizes, Class Counsel's commitment to this litigation should not be assessed in a vacuum. (*See Serrano, supra,* 20 Cal.3d at 49). A relevant factor in determining attorneys' fees is whether the litigation required Class Counsel to forego other employment. (*See ibid*). Class Counsel had to consider its workload during this litigation when considering taking on additional work that was available, and which Class Counsel had to forego in order to devote the time necessary to pursue this litigation. (Schimmel Decl., ¶ 5).

G. The Requested Fees Are Also Justified Under the Lodestar Method

Fee calculations under the lodestar method would result in a similar award, demonstrating the fairness of Class Counsel's percentage fee request. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. The base amount is then adjusted by use of a multiplier in light of various factors. (*Serrano 111, supra,* 20 Cal.3d at 48). Class Counsel's hourly rates are summarized in the Schimmel Decl. at ¶¶ 6-7.

One difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. (Schimmel Decl., ¶ 7). As a practical matter, few if any employees or consumers pay attorneys' fees on an hourly basis for such extensive litigation, and thus retainer agreements in such cases are based on a stepped-up contingency fee (with the percentage increasing from one third to forty-five – and sometimes even fifty percent, which is on par with personal injury contingency fee agreements – if the case goes to trial). (Ibid). Therefore, there is no customary hourly billing rate for work that is routinely based on a contingent fee relationship, but the nature of class action work should be strongly considered by the Court. (Ibid). Wage and hour work presents a specialized and challenging area of law that is not within the knowledge of many lawyers. (Ibid). This kind of class action work requires specialized learning and the willingness to take large risks. (Ibid).

Class Counsel has spent approximately265.70 total hours litigating these claims to date.[1] (*Id*., ¶ 7). Class Counsel expects to spend another 10 hours in connection with the final approval process (including preparing for and attending the Final Approval Hearing, and managing the Settlement through its conclusion, including anticipated communications with defense counsel, the Settlement Administrator, our client, and Class Members). (*Id*., ¶ 8). In addition to time spent during litigation, reasonable hours also include the time spent before the case was filed, including time spent interviewing the client, investigating the facts and the law, preparing the initial pleadings, as well as litigating the case. (*Webb v. Board of Educ.* (1985) 471 U.S. 234). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. (*Serrano v. Priest* (1982) 32 Cal .3d 621, 639 ("*Serrano IV*")). Based on the rates of Class Counsel, the total fees incurred to date

[1] In *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, the court addressed the issue of what evidence is required in California to support a fee application. The court held: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Id.* There is no need to attach the voluminous invoices prepared in a case as a basis for an award of fees and costs. *Id.* Through Class Counsel's declaration in support of this application, however, Plaintiff presents a thorough breakdown of the hours spent and costs incurred in prosecuting this class action. Pursuant to *Martino, supra,* this presentation is sufficient to support the amount requested.

are $222,175. (Schimmel Decl., ¶ 7). By the conclusion of this matter, the total fees are estimated to be approximately $232,675. (*Id.*, ¶ 8).

In cases where a common fund analysis is not used, once the court establishes the lodestar amount, it should adjust the fee award by a multiplier in order to make an appropriate fee award. (*Serrano III, supra,* 20 Cal.3d at 48). In applying the multiplier, *Newberg on Class Actions* states that "[m]ultiples ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied. A large common fund award may warrant an even larger multiplier." (4 *Newberg on Class Actions* 4th (4th ed. 2002) § 14.6). If the class members paid the fees that the market would bear, they would pay a fee of anywhere from one-third to forty-five percent of any recovery. Since this is the market rate, the lodestar calculation should be enhanced to reflect what the class members would pay on the open market. (*Lealao, supra,* 82 Cal.App.4th at 47-48).

In *Lealao,* the court held that trial courts should award lodestar fees by examining the percentage-of-the-benefit and adjusting the lodestar calculation accordingly. (*Id.* at 49 & 53). The court indicated that this is an upward adjustment and should be akin to a contingency fee recovery; the court stated, "[a]n adjustment reflecting the amount of the class recovery is not significantly different from an adjustment reflecting a percentage of that amount; and California courts have evaluated a lodestar as a percentage of the benefit." (*Id.* at 46). The *Lealao* method appears particularly appropriate because class actions generally are contingency fee cases for plaintiffs - and the class action clients do not expect to pay an hourly fee.

The rationale of *Lealao* comports with the purpose of the multiplier. The multiplier is "primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138). The *Lealao* court reasoned:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior. It has therefore been urged (most persistently by Judge Richard Posner) that in defining a reasonable fee in such representative actions, the law should mimic the market.

> In the class action context, that would mean attempting to award the fee that informed private bargaining, if it were truly possible, might have reached. The simplest way for the law to duplicate the bargain that informed parties would reach if agency costs were low is to look to fee award levels in actions brought by sophisticated private parties under the same or comparable statutes.

(*Lealao,* 82 Cal.App.4th at 47-48 (internal citations and quotations omitted)). The court added:

> [T]rial judges need the flexibility *Serrano III* provides, as it enables them to relate fee awards to the economic realities that determine the efficacy of the private enforcement contemplated by our civil justice system.
> Accordingly, we hold that, in cases in which the value of the class recovery can be monetized with a reasonable degree of certainty and it is not otherwise inappropriate, a trial court has discretion to adjust the basic lodestar through the application of a positive or negative multiplier where necessary to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.

(*Id.* at 49-50).

In looking at similar cases, including those set forth above, Class Counsel's requested fee comports to the market. Based on the reasonable hourly rates suggested by Class Counsel and the collective hours worked in this matter, the requested fee award would represent a negative multiplier of the current total fee lodestar. In this regard, Class Counsel's fee request is reasonable.

H. No Class Member Objected to the Requested Attorneys' Fee Award

Class Counsel's intention to request the Court's approval for payment of attorneys' fees was clearly disclosed to each Class Member in the Court-approved Class Notice. (Schimmel Decl., ¶ 10; *See also,* Hernandez Decl., Exh. A). As of the filing of this Motion, there has not been a single objection to the request for attorneys' fees. (Hernandez Decl., ¶ 12). It is fair to conclude that the Class approves of/does not take issue with the requested award of attorneys' fees. Based thereon, Class Counsel's request for one-third (1/3) of the Gross Settlement Amount, equaling Two Hundred Thirteen Thousand Dollars and Zero Cents ($213,000.00), should be granted.

I. Plaintiff's Cost Request is Reasonable

Class Counsel seeks reimbursement of a total amount of Fifteen Thousand Four Hundred Ninety-Four Dollars and Six Cents ($15,494.06) in costs and expenses in this matter, which includes reasonable future costs for filing the Motion. (Schimmel Decl., ¶ 9 and Exh. 2). All costs and expenses were reasonably incurred in prosecution of this matter.

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III. THE REQUESTED ENHANCEMENT PAYMENT TO PLAINTIFF IS REASONABLE

The named Plaintiff should be awarded an Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents ($10,000.00) for his services as the Class Representative and the risks in connection with that role. (*Id*., ¶ 11). Enhancement awards in wage and hour cases typically range from $5,000.00 to $20,000.00, although some awards are higher. (Ibid). Often, multiple class representatives receive awards in the above range. (*See e.g.*, *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 [approving an enhancement request of $10,000.00 per named plaintiff in a 188 member class]; *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) ["We also think there is something to be said for rewarding those drivers who protect and help to bring rights to a group of employees who have been the victims of discrimination."]). Here, the requested Enhancement Payment is modest, reasonable, and should be approved.

Plaintiff's actions establish that: (1) he sought to protect the interests of the Class above his own personal interests; (2) the Settlement Class Members will be benefitted from his actions by receiving a payment without having to do anything; and (3) Plaintiff has put forth a significant amount of time and effort pursuing the litigation and seeing it through to resolution. (*See*, generally, Tecaliz Decl.; *see also Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804 (discussing the criteria for determining class representative enhancement awards in concluding that a requested award of $25,000 for two class representatives was too high)).

The requested award for Plaintiff is also reasonable given the financial and personal risk he took in commencing the case, and in light of the benefits that his actions have conferred upon the Class. (Tecaliz Decl., ¶ 7; *See also Van Vranken v. Atl. Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 299-300). Additionally, in considering a requested class representative enhancement award, courts take into consideration a plaintiff's reasonable fear of retaliation. (*Staton v. Boeing Co*. (9th Cir. 2003) 327 F.3d 938, 977). Here, it is easy to see that a potential future employer could expend little effort to discover Plaintiff brought the lawsuit – and based thereon, decline to offer Plaintiff employment.

In sum, Plaintiff has performed considerable services on behalf of the Class during the litigation. (*See*, generally, Tecaliz Decl.). Class Counsel cannot understate the importance of the role of an employee who is willing to search out an attorney and step forward to assume the risk of litigation and retaliation in order to represent a class and put the interests of the class before their own interests. Plaintiff has understood that this is a class action where he is serving as the Class Representative and must protect the Class Members' interests. (*Id.*, ¶ 10). Plaintiff was the catalyst to the benefit reached for the Class Members, and has actively protected the Class Members' interests during the pendency of this matter and will continue to do so even if the case was required to go to trial. (Ibid). Plaintiff spent numerous hours participating in this matter by searching for and providing documents concerning his employment, answering any questions Class Counsel had about the documents, providing information regarding the company's practices and the duties of other hourly and/or non-exempt employees, and helping Class Counsel develop a strategy as to what additional documents and information they could seek to obtain from Defendant. (*See*, generally, Tecaliz Decl.).

In contrast, without having to take on any of the risk incurred by Plaintiff or time spent by Plaintiff in litigating this matter, Settlement Class Members will automatically be issued a payment for their claims. It appears that the Settlement Class Members recognize this enhancement was justified because since the time the Class received notice of the requested Enhancement Payment, no one has objected to the request. Thus, the Enhancement Payment to Plaintiff is warranted to compensate him for his time and effort, the fear and stress associated with assuming the responsibility of serving as the Class Representative, and the concrete risks he assumed as the Class Representative.

IV. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

In Plaintiff's Motion for Preliminary Approval, Plaintiff requested, and the Court approved, Settlement Administration Costs not to exceed Eight Thousand Five Hundred Dollars and Zero Cents ($8,500.00). (Schimmel Decl., ¶ 12). ILYM Group, Inc. is the approved Settlement Administrator. (Ibid). It is an experienced class administrator and has adequately performed the administration tasks required by the Preliminary Approval Order. ILYM's *actual* costs to administer the Settlement are only Seven Thousand Four Hundred Fifty Dollars and Zero Cents ($7,450.00). (Hernadez Decl., ¶ 17 and Exh. B). Based thereon, the requested costs should be approved.

V. THE PROPOSED LWDA ALLOCATION IS REASONABLE

Pursuant to California Labor Code Section 2699(1), the Superior Court shall review and approve the settlement of penalties sought under that California Labor Code Section. (Cal. Lab. Code § 2699(1)). For all of the reasons stated above, the Settlement is fair, reasonable, and adequate, and should be approved. As part of the Settlement, Defendant has agreed to pay Thirty Thousand Dollars and Zero Cents ($30,000.00) to settle the claims of the PAGA Employees brought pursuant to PAGA, of which the payment of Twenty-Two Thousand Five Hundred Dollars and Zero Cents ($22,500.00) (75% of the PAGA Amount) will be paid to the LDWA for education and enforcement purposes. (Schimmel Decl., ¶ 13).

It is extremely common in approved wage and hour class action cases that settle that only a small portion of the total settlement is paid to PAGA penalties "in order to maximize payments to class members." (*Magadia v. Wal-Mart Assocs*. (N.D. Cal. May 31, 2019, No. 17-CV-00062-LHK) 2019 U.S. Dist. LEXIS 91732, *90-91, citing as examples *Ceja-Corona v. CVS Pharm., Inc*. (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 [preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $900,000]; *Thio v. Genji, LLC* (N.D. Cal. 2014) 14 F. Supp. 3d 1324, 1330 [preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $1,250,000]; *Franco v. Ruiz Food Prods*. (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 [granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $2,500,000]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 [granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $3,700,000]; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 [granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $6,900,000]). Like here, in these approved settlements, the parties generally maximized statutory penalties and minimized PAGA penalties to focus on claims to the class members, the persons who actually suffered the California Labor Code violations. (Schimmel Decl., ¶ 14).

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IV. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court approve: (1) Class Counsel's request of $213,000.00 as an award of attorneys' fees; (2) the requested litigation cost award of $15,494.06; (3) the requested Enhancement Payment to Plaintiff in the amount of $10,000.00; and (4) the payment of $7,450.00 in Settlement Administration Costs to ILYM.

Respectfully submitted,

Dated: July 24, 2025

BLACKSTONE LAW, APC

By: *Miriam L. Schimmel*

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